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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

J THOMPSON, et al., Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

1-800 CONTACTS, INC., et al.,

Defendants.

) No. 2:16-cv-01183

) CLASS ACTION

) Honorable Judge Tena Campbell

) Honorable Magistrate Judge Dustin B. Pead

)
) PLAINTIFFS' DUCIVR 37-1 SHORT
) FORM DISCOVERY MOTION TO
) COMPEL RE-PRODUCTION OF
) LENS DISCOUNTERS.COM'S FTC
) MATERIALS IN THE POSSESSION OF
) 1-800 CONTACTS

Of the 20 non-parties, including at least 12 non-party online contact lens retailers, who produced documents in the FTC action, only 1 has filed an objection to the production of the very same information here. LensDiscounters.com objects solely on the basis that the request seeks sensitive business information even though that information would be protected under the Protective Order (“Order”) in this case and even though LensDiscounters has already produced that information to counsel for its largest competitor in the FTC action. ECF 180, 188.

“Confidentiality concerns . . . are . . . not a basis to withhold information appropriate for discovery.” *Sherwin-Williams Co. v. SUSE LLC*, No. 2:15-cv-00129, 2016 U.S. Dist. LEXIS 80264, at *6 (D. Utah Mar. 22, 2016). Maintaining the confidentiality of sensitive business information is “precisely the purpose and function of a Protective Order.” *Feature Films Servs., Inc.*, No. 91 C 459, 1992 U.S. Dist. LEXIS 270, at *3 (N.D. Ill. Jan. 13, 1992).

The Order in this case addresses LensDiscounters’ concerns. It allows a non-party to designate documents as either “CONFIDENTIAL” or “ATTORNEYS-EYES ONLY,” and restricts disclosure accordingly. ECF 180. It is as at least as restrictive as the protective order in the FTC action. *Compare* ECF 180 *with* ECF 188, Ex. B.

LensDiscounters frets that its information, which it generically describes as “trade secrets” and “secret technical processes,” will be disclosed to “*Thompson* class members or their attorneys.” ECF 188 at 3. But the Order does not permit disclosure to class members. ECF 180 at 7-9 (list of qualified recipients, which does not include class members). And documents designated as attorneys-eyes only cannot even be disclosed to in-house counsel for LensDiscounters’ competitors. *Id.* at 7-8. None of the outside counsel in this action are in the contact lens business. Given the strict terms of the governing Order, it is unclear how production of the requested information would create

an “unreasonable risk of injury” or “loss of a critical business advantage,” as LensDiscounters claims. ECF 188 at 2, 4; *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981) (stereotyped and conclusory statements are insufficient to satisfy an objector’s burden).

Courts have repeatedly recognized that protective orders such as the one entered here provide the necessary safeguards. *digEcor, Inc. v. e.Digital Corp.*, No. 2:06 cv 437 TS, 2008 U.S. Dist. LEXIS 69931, at *12 (D. Utah Sept. 16, 2008) (order restricting the disclosure of confidential information to attorneys who are not competitive decision-makers provides an appropriate safeguard).

LensDiscounters’ solitary objection has prevented plaintiffs from receiving *any* of the materials from the FTC action referencing confidential non-party information, which is a large swath of highly relevant information, because 1-800 Contacts is withholding all such material until all non-party objections are resolved. Accordingly, LensDiscounters’ objection is needlessly delaying plaintiffs’ prosecution of this action.

Protective orders are routinely used in courts throughout the country to safeguard the same type of information sought here. There is nothing unique about this case. LensDiscounters’ objection should be overruled.

DATED: October 22, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 22, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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